

1 Steve Neimand
2 Attorney at Law
3 Bar No. 77563
4 24009 Ventura Boulevard
5 Suite 245
6 Calabasas, Calif. 91302
7 (818) 222-0533
8 neimandlaw@sbcglobal.net
9
10 Attorney for Defendant
11 Law Offices of Robert B. Serian

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 HEATHER ROWELL, NO. 09 CV 1770 JM (RBB)
12 Plaintiff, ANSWER OF LAW OFFICES
13 OF ROBERT B. SERIAN TO
14 v. SECOND AMENDED COMPLAINT
15 LAW OFFICES OF ROBERT B. SERIAN, Jury Trial Demanded
16 Defendants.
17 _____/

18 Defendant LAW OFFICES OF ROBERT B. SERIAN answers the
19 complaint on file herein as follows:
20

21 INTRODUCTION

22 1. In answering Paragraph 1 of the Complaint, Defendant
23 admits that Plaintiff brought this lawsuit against the Law
24 Offices of Robert B. Serian. Except as herein admitted, the
25

1 remaining allegations of Paragraph 1 are denied.

2 2. In answering Paragraph 2 of the Complaint, defendant is
3 without sufficient knowledge or information to form a belief as
4 to the truth of the allegations contained in said paragraph, and
5 on that basis denies each and every allegation contained therein.

6 3. In answering Paragraph 3 of the Complaint, to the extent
7 that said paragraph alleges there were violations, defendant
8 denies said allegations. With respect to the remaining
9 allegations in Paragraph 3 of the complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

13 4. In answering Paragraph 4 of the Complaint, Defendant
14 admits that Plaintiff makes certain allegations, but denies the
15 truth of said allegations. Except as herein admitted, the
16 remaining allegations of Paragraph 4 are denied.

17
18 JURISDICTION AND VENUE

19 5. In answering Paragraph 5 of the Complaint, defendant is
20 without sufficient knowledge or information to form a belief as
21 to the truth of the allegations contained in said paragraph, and
22 on that basis denies each and every allegation contained therein.

23 6. In answering Paragraph 6, defendant denies that it
24 violated the Fair Debt Collection Practices Act, 15 U.S.C. §§

1 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection
2 Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA").

3 7. In answering Paragraph 7, defendant admits that it does
4 business within the State of California. Except as herein
5 admitted, defendant is without sufficient knowledge or
6 information to form a belief as to the truth of the allegations
7 contained in said paragraph, and on that basis denies each and
8 every allegation contained therein.

9 8. In answering Paragraph 8 of the Complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

13
14 THE PARTIES

15 9. In answering Paragraph 9, defendant admits that
16 plaintiff is a natural person. Except as herein admitted,
17 defendant is without sufficient knowledge or information to form
18 a belief as to the truth of the allegations contained in said
19 paragraph, and on that basis denies each and every allegation
20 contained therein.

21 10. Defendant admits the allegations contained in Paragraph
22 10.

23 11. In answering Paragraph 11 of the Complaint, defendant is
24 without sufficient knowledge or information to form a belief as
25

1 to the truth of the allegations contained in said paragraph, and
2 on that basis denies each and every allegation contained therein.

3 12. In answering Paragraph 12 of the complaint, defendant is
4 informed and believes said allegations are true and based on said
5 information and belief admits said allegations.

6 13. In answering Paragraph 13, defendant lacks sufficient
7 knowledge to form a belief as to whether Plaintiff's financial
8 obligation was incurred primarily for personal, family or
9 household purposes and therefore can neither admit nor deny
10 whether Plaintiff qualifies as a "consumer" as defined by 15
11 U.S.C. § 1692a(3) or as a "debtor" as defined by Cal. Civ. Code §
12 1788.2(h) and on that basis, denies the allegations. Except as
13 herein admitted, the remaining allegations of Paragraph 3 are
14 denied.

15 14. Defendant admits the allegations contained in Paragraph
16 14.

17 15. In answering Paragraph 15, defendant admits that
18 plaintiff is a natural person. Except as herein admitted,
19 defendant lacks sufficient knowledge to form a belief as to
20 whether Plaintiff's financial obligation was incurred primarily
21 for personal, family or household purposes and therefore can
22 neither admit nor deny whether Plaintiff qualifies as a
23 "consumer" as defined by 15 U.S.C. § 1692a(3) or as a "debtor" as
24 defined by Cal. Civ. Code § 1788.2(h) and on that basis, denies
25

1 the allegations. Except as herein admitted, the remaining
2 allegations of Paragraph 3 are denied.

3 16. Defendant denies the allegations contained in Paragraph
4 16.

5 17. Defendant admits the allegations contained in Paragraph
6 17.

7
8 FACTUAL ALLEGATIONS

9 18. In answering Paragraph 18 of the Complaint, defendant is
10 without sufficient knowledge or information to form a belief as
11 to the truth of the allegations contained in said paragraph, and
12 on that basis denies each and every allegation contained therein.

13 19. Defendant admits the allegations contained in Paragraph
14 19.

15 20. In answering Paragraph 20 of the Complaint, the
16 allegations are vague and ambiguous and defendant is without
17 sufficient knowledge or information to form a belief as to the
18 truth of the allegations contained in said paragraph, and on that
19 basis denies each and every allegation contained therein.

20 21. In answering Paragraph 21 of the Complaint, defendant
21 lacks sufficient knowledge to form a belief as to whether
22 Plaintiff's financial obligation was incurred primarily for
23 personal, family or household purposes and therefore can neither
24 admit nor deny whether it qualifies as a "debt" as defined by 15

1 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.
2 Code § 1788.2(f).

3 22. In answering Paragraph 22 of the Complaint, defendant
4 lacks sufficient knowledge to form a belief as to whether
5 Plaintiff's financial obligation was incurred primarily for
6 personal, family or household purposes and therefore can neither
7 admit nor deny whether it qualifies as a "debt" as defined by 15
8 U.S.C. § 1692a(5) or as a "consumer debt" as defined by Cal. Civ.
9 Code § 1788.2(f).

10 23. In answering Paragraph 23 of the Complaint, the
11 allegations are vague and ambiguous and defendant is without
12 sufficient knowledge or information to form a belief as to the
13 truth of the allegations contained in said paragraph, and on that
14 basis denies each and every allegation contained therein.

15 24. In answering Paragraph 24 of the Complaint, Defendant
16 admits that it was assigned to collect a specific debt allegedly
17 owed by plaintiff. Except as herein admitted, the remaining
18 allegations of Paragraph 24 are denied.

19 25. Defendant admits the allegations contained in Paragraph
20 25.

21 26. Defendant denies the allegations contained in Paragraph
22 26.

23 27. In answering Paragraph 27 of the Complaint, Defendant
24 admits that it contacted Plaintiff in an attempt to collect a
25

1 specific financial obligation at issue within one year preceding
2 the filing of the Complaint. Except as herein admitted, the
3 remaining allegations of Paragraph 27 are denied.

4 28. In answering Paragraph 28 of the Complaint, Defendant
5 admits that it contacted Plaintiff in an attempt to collect the
6 financial obligation at issue. Except as herein admitted, the
7 remaining allegations of Paragraph 28 are denied.

8 27. In answering Paragraph 27 of the Complaint, Defendant
9 admits that it contacted Plaintiff in an attempt to collect the
10 financial obligation at issue. Except as herein admitted, the
11 remaining allegations of Paragraph 27 are denied.

12 28. Defendant denies the allegations contained in Paragraph
13 28.

14 29. In answering Paragraph 29 of the Complaint, Defendant
15 admits that it contacted Plaintiff on several occasions in an
16 attempt to collect the financial obligation at issue. Except as
17 herein admitted, the remaining allegations of Paragraph 29 are
18 denied.

19 30. Defendant denies the allegations contained in Paragraph
20 30.

21 31. In answering Paragraph 31 of the Complaint, Defendant
22 admits that it contacted Plaintiff on several occasions in an
23 attempt to collect the financial obligation at issue. Except as
24 herein admitted, the remaining allegations of Paragraph 31 are
25

denied.

32. Defendant denies the allegations contained in Paragraph 32.

33. Defendant denies the allegations contained in Paragraph 33.

34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant denies the allegations contained in Paragraph 35.

36. Defendant denies the allegations contained in Paragraph 36.

37. Defendant denies the allegations contained in Paragraph 37.

38. Defendant denies the allegations contained in Paragraph 38.

39. In answering Paragraph 39 of the Complaint, Defendant denies that it spoke with an administrative assistant by posing as a patient. As to the remaining allegations in said Paragraph, defendant lacks sufficient knowledge to form a belief as to the matters alleged and therefore can neither admit nor deny.

40. Defendant denies the allegations contained in Paragraph 40.

41. In answering Paragraph 41 of the Complaint, Defendant denies that it made incessant phone calls to Plaintiff's place of

1 employment. As to the remaining allegations in said Paragraph,
2 defendant lacks sufficient knowledge to form a belief as to the
3 matters alleged and therefore can neither admit nor deny.

4 42. Defendant denies the allegations contained in Paragraph
5 42.

6 43. Defendant denies the allegations contained in Paragraph
7 43.

8 44. Defendant denies the allegations contained in Paragraph
9 44.

10 45. Defendant denies the allegations contained in Paragraph
11 45.

12 46. Defendant denies the allegations contained in Paragraph
13 46.

14 47. Defendant admits the allegations contained in Paragraph
15 47.

16 48. In answering Paragraph 48 of the Complaint, Defendant
17 admits that it requested a dismissal of the state action. Except
18 as herein admitted, the remaining allegations of Paragraph 48 are
19 denied.

20 49. Defendant denies the allegations contained in Paragraph
21 49.

22 50. Defendant denies the allegations contained in Paragraph
23 50.

24 51. Defendant denies the allegations contained in Paragraph
25

44.

COUNT I

52. Answering Paragraph 52 of the Complaint, defendant incorporates herein by reference, as if set forth in full, defendant's answers to Paragraphs 1 through 51, inclusive as set forth above.

53. Defendant denies the allegations contained in Paragraph 53.

54. Defendant denies the allegations contained in Paragraph 54.

COUNT II

55. Answering Paragraph 55 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 54, inclusive as set forth above.

56. Defendant denies the allegations contained in Paragraph 56.

57. Defendant denies the allegations contained in Paragraph 57.

COUNT III

58. Answering Paragraph 58 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 57, inclusive as set forth above.

59. Defendant denies the allegations contained in Paragraph

59.

60. Defendant denies the allegations contained in Paragraph

60.

61. Defendant denies the allegations contained in Paragraph

61.

COUNT IV

62. Answering Paragraph 62 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 61, inclusive as set forth above.

63. Defendant denies the allegations contained in Paragraph

63.

64. Defendant denies the allegations contained in Paragraph

64.

65. Defendant denies the allegations contained in Paragraph

65.

66. Defendant denies the allegations contained in Paragraph

66.

COUNT V

67. Answering Paragraph 67 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 66, inclusive as set forth above.

68. Defendant denies the allegations contained in Paragraph 68.

69. Defendant denies the allegations contained in Paragraph 69.

70. Defendant denies the allegations contained in Paragraph 70.

71. Defendant denies the allegations contained in Paragraph 71.

72. Defendant denies the allegations contained in Paragraph 72.

COUNT VI

73. Answering Paragraph 73 of the Complaint, defendant incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 72, inclusive as set forth above.

74. Defendant denies the allegations contained in Paragraph 74.

75. Defendant denies the allegations contained in Paragraph 75.

76. Defendant denies the allegations contained in Paragraph 76.

COUNT VII

77. Answering Paragraph 77 of the Complaint, defendant

incorporates herein by reference, as if set forth in full, their answers to Paragraphs 1 through 76, inclusive as set forth above.

78. Defendant denies the allegations contained in Paragraph 78.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The allegations of the Complaint fail to state a claim against Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations/Laches)

The purported claims set forth in the Complaint are barred in whole or in part by the applicable statutes of limitation and/or the equitable doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

(Bona Fide Error)

To the extent that any violation of law occurred, which Defendant expressly denies, said violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Defendant of procedures reasonably adapted to avoid any such error.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The allegations in the Complaint and relief requested are on information and belief barred in whole or in part by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

(No Wilful Conduct)

Defendant acted in good faith at all times in its dealings with Plaintiff, and if any conduct by Defendant is found to be unlawful, which Defendant expressly denies, such conduct was not willful and should not give rise to liability.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that she may have and is therefore barred from recovering damages, if any, from Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff has waived her rights, if any, to recover the relief she seeks in the Complaint based upon her own conduct and

admissions with respect to the financial obligation at issue.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

NINTH AFFIRMATIVE DEFENSE

(Apportionment)

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of Defendant and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of Defendant should be reduced accordingly.

TENTH AFFIRMATIVE DEFENSE

(Supervening Cause)

The causes of action in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Defendant had or has no control.

ELEVENTH AFFIRMATIVE DEFENSE**(Equitable Indemnity)**

To the extent that Plaintiff has suffered any damage as a result of any alleged act or omission of Defendant, which Defendant denies, Defendant is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

TWELFTH AFFIRMATIVE DEFENSE**(Litigation Privilege)**

The actions of Defendant complained of in the Complaint constitute communications that were made in good faith and in anticipation of or in connection with ongoing litigation and Plaintiff's claims are therefore barred, in whole or in part, by the California litigation privilege and/or the *Noerr-Pennington Doctrine*.

THIRTEENTH AFFIRMATIVE DEFENSE**(Not a Debt Collector)**

Defendant, a law firm, is not a "debt collector" as defined by the California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.*

FOURTEENTH AFFIRMATIVE DEFENSE

(First Amendment)

Defendant's conduct is protected under the First Amendment of the United States Constitution and the California Constitution. Plaintiffs' proposed interpretation of provisions of the FDCPA must be rejected as it would place an unreasonable restraint upon Defendant's First Amendment rights, thereby raising serious constitutional issues.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

Any award of punitive damages as sought by plaintiff would violate the due process and excessive fine clauses of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as the Constitution of the State of California.

SIXTEENTH AFFIRMATIVE DEFENSE

(Minimal Intrusion)

The alleged intrusion into plaintiff's privacy was minimal.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Authorization or Ratification)

The defendant did not authorize, direct or ratify the

1 alleged acts of the other defendants.

2
3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **(No Nexus, Injury Not Forseeable)**

5 No nexus exists between the employment or other relationship
6 between this answering defendant, any other defendant, and the
7 activity which resulted in the alleged injury that was not
8 forseeable.

9
10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 **(Outside Course and Scope)**

12 The other defendants were not acting within the scope of an
13 employment or other relationship with this answering defendant
14 for respondeant superior purposes.

15
16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 **(No Ratification)**

18 Defendant is not responsible for punitive damages because it
19 neither directed nor ratified the acts of any other defendant.

20
21
22 **JURY DEMAND**

23 Pursuant to Rule 38 of the Federal Rules of Civil Procedure,
24 Plaintiff hereby requests a jury trial.

WHEREFORE, Defendant requests judgment as follows:


1. That Plaintiff take nothing by the Complaint, which should be dismissed with prejudice.

2. That Defendant recover from Plaintiff costs according to proof.

3. That Defendant recover attorneys' fees according to proof.

4. That the Court orders such other further reasonable relief as the Court may deem just and proper.

Dated: April 17, 2010


STEVE NEIMAND
Attorney for Defendant

CERTIFICATION [FRCP Rule 11(b)]

I hereby certify that this Answer:

1. Is not being presented for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation;

2. Is warranted by existing law or by non-frivolous argument for extension or modification or reversal of existing law; and

3. Has evidentiary support for all factual contentions or denials.

Dated: April 17, 2010



STEVE NEIMAND
Attorney for Defendant

PROOF OF SERVICE

I, the undersigned say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 24009 Ventura Boulevard, Suite 245, Calabasas, California.

On April 17, 2010, I served the within:

ANSWER TO SECOND AMENDED COMPLAINT

on the persons indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Calabasas, California, addressed as follows:

Alison C. Admiral, Esq.
Joshua B. Swigart, Esq.
Hyde & Swigart
411 Camino Del Rio South
Suite 301
San Diego, CA 92108-3551

and by faxing a copy to: (619) 297-1022

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Calabasas, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17, 2010 at Calabasas, California.


KERRY ROSE